

**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**PATRICK A REID,
Plaintiff**

v.

**TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, ET AL.,
Defendants**

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Civil No. CC-07-438

ORDER OF DISMISSAL

Plaintiff is currently incarcerated at the Polunsky Unit in Livingston, Texas. He claims the First Presbyterian Church (“FPC”) in Corpus Christi, Texas, its senior pastor, and the Texas Department of Criminal Justice, Criminal Institutions Division (“TDCJ-CID”) were deliberately indifferent to his health and safety in violation of the Eighth Amendment. Specifically, Plaintiff claims he was sexually assaulted by a FPC staff member and that the warden cannot adequately protect him from assault and rape.

Plaintiff’s failure to protect claims against TDCJ-CID, Warden Massey, and unnamed Polunsky Unit defendants were transferred to the United States District of Texas, Lufkin Division. 28 U.S.C. §1404(a); 28 U.S.C. §124(c)(6). The Court retained Plaintiff’s claims against FPC and its senior pastor.

Plaintiff argues FPC and its senior pastor are liable for damages he sustained as a result of the sexual assault because the staff member who molested him had keys to the church.

The United States Magistrate Judge recommends the Court dismiss Plaintiff's claims against FPC and its senior pastor for failure to state a claim and as frivolous. The basis for her recommendation is that the alleged deprivation was not committed by a state actor. *West v. Atkins*, 487 U.S. 42, 48 (1988). Plaintiff did not file objections. The Court regards such omission as Plaintiff's agreement with and acceptance of the Magistrate Judge's findings.


The Court finds no clear error in the Magistrate Judge's memorandum and adopts her findings and conclusions. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Plaintiff's claims against FPC and its senior pastor are DISMISSED with prejudice for failure to state a claim and as frivolous. 28 U.S.C. §1915(g).

To the extent Plaintiff intends to raise any state law claims pursuant to the Court's supplemental jurisdiction, such state law claims are DISMISSED without prejudice. Plaintiff may raise those claims in state court.

The Clerk of the Court shall provide a copy of the Magistrate Judge's recommendation and this Order of Dismissal to the District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler Texas, 75702, Attention: Betty Parker.

ORDERED this 20 day of March, 2008.



HAYDEN HEAD
CHIEF JUDGE